

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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ROBERT M. ANDERSON,

Plaintiff,

v.

MR. GOFF, MS. WILLARD-WEST,  
GARY BOUGHTON, and MAKDA  
FESSAHAYE,

Defendants.

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OPINION and ORDER

Case No. 19-cv-575-wmc

*Pro se* plaintiff Robert Anderson, a prisoner at the Wisconsin Secure Program Facility (“WSPF”), brings this action under 42 U.S.C. § 1983 the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc-2(b), alleging that several Wisconsin Department of Corrections (“DOC”) employees violated his right to practice his religion and discriminated against him in handling his efforts to comply with the Ramadan diet in 2019. Anderson has filed an amended complaint (dkt. #11), which the court accepts as the operative pleading for screening pursuant to 28 U.S.C. § 1915A. After reviewing Anderson’s allegations, the court concludes that he may proceed on claims under the First and Fourteenth Amendments, but he may not pursue a claim under RLUIPA.

## ALLEGATIONS OF FACT<sup>1</sup>

Plaintiff Robert Anderson was incarcerated at WSPF during the relevant time period, and he is a practicing Muslim who adheres to the dietary restrictions of Ramadan. He names as defendants Makda Fessahaye, previously the Division of Adult Institutions (“DAI”) Administrator; Gary Boughton, WSPF’s warden; Ms. Willard-West, the head of the DOC’s Religious Practices Steering Committee; and Mr. Goff, WSPF’s Chaplain.

Anderson explains that in 2019, Ramadan began on May 6, 2019, and ended June 5, 2019. At WSPF, the deadline for prisoners to request the Ramadan meals was March 8, 2019.

Anderson arrived at WSPF on February 11, 2019. Anderson did not know about the March 8 deadline until March 10, so that day, Anderson wrote to Chaplain Goff asking to participate in the Ramadan diet. On March 11, Goff denied his request, explaining that the deadline to sign up had passed. On March 19, Anderson wrote again to Goff, explaining that he was unaware of the deadline and did not see any postings anywhere that would have alerted him to request the Ramadan diet sooner. On or around March 20, Anderson wrote to Warden Boughton as well, but Boughton never responded.

On April 15, 2019, Anderson wrote a letter to Ms. Willard-West about his failed attempts to receive the Ramadan diet, but he never received a response. That same day, Anderson wrote a letter to Jim Schwochert, who he believed was the DAI Administrator, also asking to participate in the Ramadan diet. Anderson alleges that Fessahaye directed

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<sup>1</sup> In addressing any pro se litigant’s complaint, the court must read the allegations generously, drawing all reasonable inferences and resolving ambiguities in plaintiff’s favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

an employee to respond, instructing Anderson to submit a complaint at WSPF using the Inmate Complaint Review System and indicating that Boughton would receive a copy of this letter. No further relief was offered, and Anderson claims that he suffered weight loss and incurred expenses to ensure that he was able to maintain proper nutrition during Ramadan. He further claims that Chaplain Goff made exceptions to the Ramadan meal deadline for other prisoners, but not for him.

## OPINION

Plaintiff seeks to proceed on a RLUIPA claim, as well as under the First and Fourteenth Amendments, which the court addresses in turn.

### I. RLUIPA

As an initial matter, plaintiff's allegations do not support a claim under RLUIPA. Under RLUIPA, the plaintiff has the initial burden to show that he has a sincere religious belief and that his religious exercise was substantially burdened. 42 U.S.C. § 2000cc-1(a); *Cutter v. Wilkinson*, 544 U.S. 709, 712 (2005). If the plaintiff makes the showing, the burden shifts to the defendants to show that their actions further a "compelling governmental interest," and do so by "the least restrictive means." *Id.*; *Holt v. Hobbs*, 574 U.S. 352, 357 (2015) (citing *Burwell v. Hobby Lobby*, 573 U.S. 682, 717 n.28 (2014)). If a plaintiff prevails on a RLUIPA claim, he is limited to declaratory and injunctive relief; he cannot obtain money damages. *Grayson v. Schuler*, 666 F.3d 450, 451 (7th Cir. 2012).<sup>2</sup>

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<sup>2</sup> In December 2020, the United States Supreme Court held that government officials may

Construing plaintiff's allegations generously, it is reasonable to infer that the inability to receive Ramadan meals in 2019 substantially burdened his ability to practice his Muslim faith. However, given that plaintiff missed the deadline because he was unaware that the request deadline existed, his allegations do not suggest that he continues to be at risk of being denied participation in the Ramadan meals due to that deadline. As such, any claim for prospective injunctive relief is moot. *See Maddox v. Love*, 655 F.3d 709, 716 (7th Cir. 2011) (holding that prisoner's claim for injunctive relief was moot because he was no longer a prisoner at the institution causing him harm and had "not shown a realistic possibility" that he would again be incarcerated at the same institution). Accordingly, the court will not grant plaintiff leave to proceed on a RLUIPA claim.

## II. First Amendment Free Exercise Claim

Plaintiff claims that defendants violated his right under the First Amendment to practice his religion. To state a First Amendment free exercise claim, the plaintiff must allege that the prison officials "unjustifiably placed a substantial burden on his religious practices." *Thompson v. Holm*, 809 F.3d 376, 380 (7th Cir. 2016). In the context of religious diets, the Court of Appeals for the Seventh Circuit has held "that forcing an

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be sued for money damages in their individual capacities under RLUIPA's sister statute, the Religious Freedom Restoration Act ("RFRA"). *Tanzin v. Tanvir*, 141 S. Ct. 486, 490 (2020). The Court did not discuss whether its holding applies to RLUIPA as well, and the Seventh Circuit has not extended *Tanzin* to RLUIPA claims. Even assuming *Tanzin* does alter the remedies available under RLUIPA, however, qualified immunity would still shield all defendants here from monetary damages. Indeed, since all of the relevant conduct took place in 2019, well before *Tanzin*, "existing precedent" had "placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).

inmate to choose between daily nutrition and religious practice is a substantial burden.”

*Id.*

Plaintiff’s allegations are sufficient to support a claim upon which relief may be granted under the free exercise clause, since it is reasonable to infer that his inability to obtain Ramadan meals in 2019 substantially burdened his religious practices. Accordingly, the court will allow plaintiff to proceed on this claim against defendants Goff, Willard-West, Boughton and Fessehaye, since plaintiff’s allegations suggest that each of them was in a position to give plaintiff access to the Ramadan meal in 2019 and either unreasonably refused or failed to respond to his complaints.

## **II. Fourteenth Amendment Equal Protection Claim**

Plaintiff may also proceed on an equal protection claim against defendant Goff, since plaintiff’s allegations suggest that he believes Goff singled him out for mistreatment. A plaintiff may pursue a class-of-one equal protection claim for being treated “intentionally differently from other similarly situated” prisoners for no rational reason. *D.S. v. E. Porter Cty. Sch. Corp.*, 799 F.3d 793, 799 (7th Cir. 2015) (quotation omitted).

Construed generously, plaintiff’s allegations that Goff made exceptions to the Ramadan meal deadline but refused in his circumstances supports an inference that Goff intentionally treated plaintiff less favorably, without justification. Accordingly, plaintiff may proceed against defendant Goff on an equal protection class-of-one claim, with the warning that this claim will be difficult to prove, since class-of-one equal protection claims involving discretionary decisions by prison officials are generally disfavored. *See Nigl v.*

*Litscher*, 378 F. Supp. 3d 729, 740 n.8 (E.D. Wis. 2019) (“Class-of-one equal protection claims are very difficult, if not impossible, to prove in the context of an official’s discretionary decision-making.”), *aff’d*, 940 F.3d 329 (7th Cir.), cert. denied, 140 S. Ct. 2772, 206 L. Ed. 2d 942 (2020); *Atkinson v. Mackinnon*, No. 14-CV-736-BBC, 2015 WL 506193, at \*1 (W.D. Wis. Feb. 6, 2015) (prison disciplinary decisions not subject to equal protection challenge) (citing *Engquist v. Or. Dep’t of Agric.*, 553 U.S. 591, 603–04 (2008) (class-of-one equal protection claims not available for discretionary decisions “based on a vast array of subjective, individualized assessments”)); *Taliaferro v. Hepp*, No. 12-cv-921, 2013 WL 936609, at \*6 (W.D. Wis. Mar. 11, 2013) (“[C]lass-of-one claims are likely never cognizable in the prison disciplinary context . . .”).

## ORDER

IT IS ORDERED that:

- (1) Construing plaintiff Robert M. Anderson’s amended complaint as a motion to amend (dkt. #11), it is GRANTED.
- (2) Plaintiff Robert M. Anderson is GRANTED leave to proceed on claims that defendants Goff, Willard-West, Boughton and Fessehaye violated his right to free exercise of his religion under the First Amendment. Anderson may also proceed against defendant Goff on a Fourteenth Amendment class-of-one equal protection clause claim.
- (2) Plaintiff is DENIED leave to proceed on any other claim.
- (3) Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff’s complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have 60 days from the date of the Notice of Electronic Filing in this order to answer or otherwise plead to the plaintiff’s complaint if it accepts service for the defendants.

- (4) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to the defendants' attorney.
- (5) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- (6) It is plaintiff's obligation to inform the court of any change in his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for failure to prosecute.
- (7) Plaintiff's motion to expedite (dkt. #14) is DENIED as moot.

Entered this 28th day of September, 2021.

BY THE COURT:

/s/

WILLIAM M. CONLEY  
District Judge